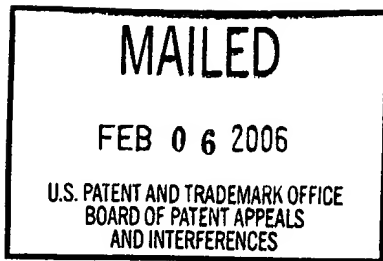


The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**



Ex parte RICHARD L. PALINKAS

Appeal No. 2006-0686
Application No. 09/407,053¹

ON BRIEF

Before McQUADE, NASE, and BAHR, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 3, 5, 6, 8, 10 to 15, 17 and 19 to 24, which are all of the claims pending in this application.

We REVERSE.

¹ This application was previously before this Board in Appeal No. 2004-1395 wherein all the rejections under 35 U.S.C. § 103 were reversed.

BACKGROUND

The appellant's invention relates generally to springs and is more specifically directed to devices that dampen lateral rolling motions that occur during the movement of railroad cars (specification, p. 1). A copy of the dependent claims under appeal is set forth in the appendix to the appellant's brief. Claims 1 and 15, the independent claims under appeal, read as follows:

1. A bearing pad assembly comprising:
 - a first housing having an exterior surface and defining a bore extending at least part-way through said first housing;
 - a first load bearing member coupled to said first housing, and defining an outwardly facing first abutment surface;
 - a second housing defining a bore of a shape similar to said exterior surface of said first housing and adapted to slideably receive said first housing therein;
 - a second load bearing member coupled to said second housing and defining an outwardly facing second abutment surface opposite to said first abutment surface;
 - at least one slip lining positioned between said first housing exterior surface and a bore wall defining said second housing bore; and
 - at least one compression spring positioned within said first housing bore, said compression spring comprising a solid resilient material having a torus shape.
15. A bearing pad assembly comprising:
 - a first housing having a bore extending through said first housing;
 - a first load bearing member coupled to said first housing and defining an abutment surface opposite to said first housing;
 - a second housing having a bore extending through said second housing adapted to telescopically receive said first housing;
 - a second load bearing member coupled to said second housing and defining an abutment surface opposite to said second housing; and
 - at least one compression spring in the shape of a torus positioned within said first housing bore.

Claims 15, 19, 20 and 24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Anderson (U.S. Patent Number 4,566,678).

Claims 1, 3, 5, 6, 8, 10 to 14, 17 and 21 to 23 stand rejected under 35 U.S.C. § 103 as being unpatentable over Anderson in view of Platkiewicz et al. (U.S. Patent Number 4,465,799), Curtis et al. (U.S. Patent Number 5,036,774) and Spencer et al. (U.S. Patent Number 5,086,707).

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (mailed June 20, 2005) for the examiner's complete reasoning in support of the rejections, and to the brief (filed May 10, 2005) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

The sole issue raised in this appeal is whether or not the claimed term "torus" is met by Anderson's spring members 54 (see Figure 4) which have a shape more clearly depicted in Figure 3. Anderson teaches (column 2, lines 33-42) that:

The shape of the elastomer body, as well as the shape of the central core opening can also be varied to suit particular applications. For example, the body can be cylindrical, oval, generally rectangular or square in configuration. The core opening likewise can be circular, oval, rectangular or square in cross-section. In the preferred embodiment the transverse shape of the core opening and the body are similar and co-axial, so that the symmetry of the body is maintained.

The United States Patent and Trademark Office (USPTO) applies to the verbiage of the claims before it the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the appellant's specification. In re Morris, 127 F.3d 1048, 1054, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). See also In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). 2004).

Merriam-Webster's Third New International Dictionary defines the term "torus" as "a surface or solid shaped like a doughnut and formed by revolving a circle about a line in its plane without intersecting it" (see Exhibit B attached to the brief). With this definition, it is our determination that the claimed term "torus" is not met by Anderson's spring members 54 since the spring members 54 are not formed by revolving a circle

about a line in its plane without intersecting it so as to define a surface or solid shaped like a doughnut.

The examiner's reliance on the three patents cited on page 8 of the answer and page 6 of the amended specification as providing support for a broader definition of the term "torus" is misplaced. First, two of the three patents cited on page 8 of the answer misuse the term "torus" and thus provide no support whatsoever for a broader definition of the term "torus." Second, the other of the three patents cited on page 8 of the answer does not use the term "torus" and thus provides no support whatsoever for a broader definition of the term "torus." Lastly, while page 6 of the amended specification provides that "[w]hile toroid shaped rings with circular cross sections have been shown and described, the present invention is not limited in this regard as other cross-sectional shapes, such as square, can be employed without departing from the broader aspect of the present invention," this does not outweigh the fact that the claims use the term "torus" which has a more limiting definition as set forth above. Thus, by using the term "torus" the appellant has expressly adopted the more limited dictionary definition for that term so as to distinguish the claimed invention over Anderson.

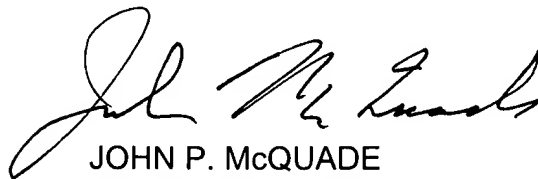
Since the applied prior art does not teach or suggest either (1) at least one compression spring comprising a solid resilient material having a torus shape as recited

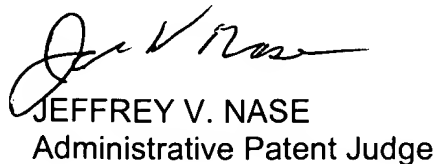
in claim 1, or (2) at least one compression spring in the shape of a torus as recited in claim 15, the decision of the examiner to reject claims 15, 19, 20 and 24 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claims 1 , 3, 5, 6, 8, 10 to 14, 17 and 21 to 23 under 35 U.S.C. § 103 is reversed.

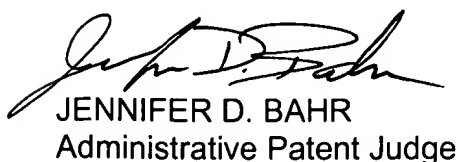
CONCLUSION

To summarize, the decision of the examiner to reject claims 15, 19, 20 and 24 under 35 U.S.C. § 102(b) is reversed and the decision of the examiner to reject claims 1 , 3, 5, 6, 8, 10 to 14, 17 and 21 to 23 under 35 U.S.C. § 103 is reversed.

REVERSED


JOHN P. McQUADE
Administrative Patent Judge


JEFFREY V. NASE
Administrative Patent Judge


JENNIFER D. BAHR
Administrative Patent Judge

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